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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,612	02/18/2004	James G. Archuleta JR.	0063.03	2692
25712	7590	08/04/2005	EXAMINER	
USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH 1815 N. UNIVERSITY STREET PEORIA, IL 61604			BATSON, VICTOR D	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/781,612

Applicant(s)

ARCHULETA ET AL

Examiner

Victor Batson

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-7 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5,7,15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Risch (4,519,739) in view of Fryrear (4,041,624).

Risch discloses a subsoiling implement including a frame 44, and a grapple rake comprising a thumb 20a. Risch however lacks at least one shank socket.

Fryrear teaches that it is known in the excavation art for a subsoiling implement to include two shank sockets adapted to receive two shanks 38, 62 as shown in figures 2 & 3. Fryrear teaches that it is known to use ripper assemblies with an excavating implement similar to that of Risch, to allow the implement to perform a variety of applications including a ripping function to aid in penetrating hard or rock-filled earth.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Risch, by providing ripper assemblies similar to that of Fryrear, to allow the implement to be used to perform additional functions such as ripping hard or rock-filled earth as taught by Fryrear.

Concerning claims 4 & 20, one of the teeth 40 of Fryrear is considered a coulter blade.

Claims 6,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Risch (4,519,739) in view of Fryrear (4,041,624) as applied to claims 1-5,7,15-20 above, and further in view of Rogers (3,880,242).

Risch as modified by Fryrear discloses a subsoiling implement as described previously, but lacks the subsoiling shank comprising wings.

Rogers teaches that it is known in the art for wings to be attached to a subsoiling shank to allow the ripper plow to be used as a stubble mulcher (abstract, figure 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Risch as modified by Fryrear, by adding a sweep attachment having wings to allow the implement to be used as a stubble mulcher as taught by Rogers.

### ***Response to Arguments***

Applicant argues that the modification of an excavator bucket as proposed in the rejection is not deemed to render obvious the grapple rake as claimed by applicants. Applicant further argues that bucket teeth cannot be considered a coulter blade. It is the examiner's position however that applicant's arguments are more limiting than the claims themselves and notes that although applicants' specification may describe a grapple rake, applicants' claims do not include structural limitations that would preclude the combination from being considered a grapple rake. Additionally, it is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 2, 2005



Victor Batson  
Primary Examiner  
Art Unit 3671